



PUBLIC NOTICE

Federal Communications Commission
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DA 04-258

Released: February 2, 2004

DOMESTIC SECTION 214 APPLICATION FILED FOR ACQUISITION OF ASSETS OF RCN TELECOM SERVICES, INC., BY CARMEL TELEPHONE SERVICES, INC.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 04-14

Comments Due: February 17, 2004

Reply Comments Due: February 23, 2004

On January 15, 2004, RCN Telecom Services, Inc. (RCN) and Carmel Telephone Services, Inc. (CarmelTel), pursuant to sections 63.03 and 63.04 of the Commission's rules,¹ requested that the Commission grant authority for the transfer of control of certain telecommunications assets of RCN in New York to CarmelTel.²

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission's rules because the proposed transaction would result CarmelTel and its affiliates having a market share in the interstate, interexchange market of less than 10 percent, and CarmelTel would provide competitive telephone exchange services or exchange access services exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction. Further, neither of the Applicants, nor any of their affiliates, are dominant with respect to any telecommunications service.³

¹ 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

² Applicants are also filing an application for transfer of control associated with authorizations for international services. Any action on this domestic section 214 application is without prejudice to Commission action on other related pending applications.

³ 47 C.F.R. § 63.03(b)(2)(i); *see* 47 C.F.R. § 63.03(b)(3) ("For purposes of (b)(1) and (2) of this paragraph, the terms 'applicant,' 'carrier,' 'party,' and 'transferee' (and their plural forms) include any affiliates of such entities within the meaning of section 3(1) of the Communications Act of 1934, as amended.").

RCN, a Pennsylvania corporation, is a communications and information service provider with a fiber-optic and coaxial cable data and voice network in metropolitan areas. RCN, with its affiliates, provides video, data and voice services in the Boston, New York, Philadelphia/Lehigh Valley, Chicago, San Francisco, and Washington, D.C. metropolitan markets. In the Carmel, New York area, RCN is the local cable franchise operator.⁴ RCN is a wholly owned subsidiary of RCN Corporation, a publicly traded Delaware corporation.

CarmelTel, a New York Corporation, is a newly formed subsidiary of Susquehanna Cable Co., which in turn is a subsidiary of Susquehanna Media Co. All of the common stock of Susquehanna Media Co. is owned by Susquehanna Pfaltzgraff Co., a privately held corporation. Additionally, the following entities own or control 10 percent or more of CarmelTel: (1) Comcast Corp.; (2) Louis J. Appell Residuary Trust fbo Louis J. Appell, Jr.; (3) Louis J. Appell Residuary Trust fbo Helen A. Norton; (4) Louis J. Appell Residuary Trust fbo George N. Appell & his Descendants; and (5) State Street Bank and Trust Co. Applicants assert that Susquehanna Cable Co. is currently a leader in delivering leading-edge technology to cable and broadband customers and is in the process of expanding its product offerings to telephone services. Applicants assert that advanced hybrid fiber optic and coaxial networks are in place or are under construction today in nearly 90% of its service areas, and are anticipated to be fully deployed within the next two (2) years. Applicants assert that these high-capacity broadband networks will allow Susquehanna Cable, through its subsidiaries, including CarmelTel, to be a premier provider of video, data and voice services to consumers and businesses in the communities that it serves. Neither CarmelTel nor any of its affiliates currently provide telecommunications or cable service in the affected service area.⁵

Through the proposed transaction, CarmelTel proposes to acquire RCN's telecommunications assets located in and around Carmel, New York.⁶ Specifically, the assets to be acquired by CarmelTel include, among other things, the regulated communications assets associated with RCN's facilities-based telecommunications operations in the Carmel, New York

⁴ RCN is the local monopoly cable company in the proposed asset transfer service area, except for the towns of Putnam Valley and Somers where RCN and Cablevision hold dual franchises. Second Letter from Russell M. Blau & Brett P. Ferencak, Counsel for RCN, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 04-14 at 1 (filed Jan. 29, 2004). RCN's broadband services are provided exclusively through cable modem. Letter from Russell M. Blau & Brett P. Ferencak, Counsel for RCN, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 04-14 at 1 (filed Jan. 30, 2004).

⁵ RCN has also filed a petition with the New York Public Service Commission to transfer its cable service franchises, cable facilities, and state certificates of confirmation for the provision of cable services in the affected service area to Carmel Cable Television, a subsidiary of Susquehanna Cable Co. First Letter from Russell M. Blau & Brett P. Ferencak, Counsel for RCN, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 04-14 at Attachment (filed Jan. 29, 2004).

⁶ The affected service area includes the following communities of interest: Town of Beekman, Village of Brewster, Town of Carmel, Town of Kent, Town of Patterson, Town of Pawling, Village of Pawling, Town of Putnam Valley, Town of Somers, and Town of Southeast.

area, including the associated telecommunications equipment and almost all local and long distance customers and customer accounts of RCN. Such assets include, but are not limited to, inventory, equipment, telephone plant, accounts, general intangibles, supplies, contract rights, investment property, franchise rights, and customer contracts used or useful in the offering of telecommunications services. Following the proposed consummation of the transaction, and under a transition services agreement to be signed at or before closing, RCN will provide some administrative services, including billing and customer service, to the affected customers, as an agent for CarmelTel, during a transitional period not to exceed 12 months. At all times after the consummation of the transaction, CarmelTel will be the carrier of record for these customers. Upon the transfer of the facilities-based customers to CarmelTel, CarmelTel will provide service to these customers under comparable rates, terms and conditions as currently being provided by RCN.

As the proposed transaction only involves RCN's operations in the affected service area, Applicants assert that RCN will continue to provide high-quality telephone services in its other service areas in the state of New York, including Manhattan and Queens, as well as other states, pursuant to its existing authorization from the Commission.

The Applicants assert that the proposed transaction would serve the public interest because the transaction is expected to invigorate competition in New York. CarmelTel will obtain assets and customers which will expand the company's client base, provide CarmelTel a presence in the telecommunications market in New York, and thereby make CarmelTel a more viable competitor in all of its markets.

GENERAL INFORMATION

The transfer of control application identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments by February 17, 2004** and **reply comments by February 23, 2004.**⁷ Unless otherwise notified by the Commission, Applicants are permitted to transfer on the 31st day after the date of this notice.⁸ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each

⁷ See 47 C.F.R. § 63.03(a).

⁸ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

- (1) the Commission's duplicating contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: qualexint@aol.com; facsimile: (202) 863-2898; phone: (202) 863-2893;
- (2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: twilson@fcc.gov;
- (3) Gail Cohen, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-A103, Washington, D.C. 20554; e-mail: gail.cohen@fcc.gov;
- (4) Julie Veach, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C124, Washington, D.C. 20554; e-mail: julie.veach@fcc.gov;
- (5) Christopher Killion, Office of General Counsel, 445 12th Street, S.W., Room 8-C740, Washington, D.C. 20554; e-mail: christopher.killion@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. They may also be purchased from the Commission's

duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

For further information, please contact Tracey Wilson-Parker at (202) 418-1394 or Gail Cohen at (202) 418-0939.

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